

502 KAR 20:020. Detection of deception examiners.

RELATES TO: KRS 329.010 -329.030, 42 U.S.C. 3796gg-8

STATUTORY AUTHORITY: KRS 15A.160, 329.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 329.030(6) require the Secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations establishing professional standards for detection of deception examiners. This administrative regulation establishes the practice requirements for detection of deception examiners.

Section 1. Definitions. (1) "Detection of deception examiner" is defined by KRS 329.010(1).

(2) "Secretary" is defined by KRS 329.010(5).

(3) "Sex crime" means an offense or attempt to commit an offense defined in:

(a) KRS Chapter 510;

(b) KRS 530.020;

(c) KRS 530.064(1)(a);

(d) KRS 531.310; or

(e) KRS 531.320.

Section 2. Advertising, soliciting, and discrimination are prohibited as follows:

(1) An examiner shall not advertise in any manner which would tend to deceive or defraud the public.

(2) An examiner shall not publish or circulate any fraudulent, false, or misleading statements as to the skill or method of practice of any person or examiner.

(3) An examiner shall not claim superiority over other examiners as to skill or method of practice.

(4) An examiner shall not divide fees, or agree to split or divide the fees received for detection of deception services with any person for bringing or referring a client.

(5) An examiner shall not attempt to solicit business as a result of information or statements obtained from an examinee relating to the examinee's past employment or employer.

(6) An examiner shall not refuse to render detection of deception services to or for any person solely on account of the race, color, creed, sex, or national origin of the person.

Section 3. (1) The examiner shall inform the prospective examinee that taking the detection of deception examination is a voluntary act and the examiner shall obtain the written consent of the examinee to undergo the examination.

(2) The examiner shall not conduct an examination on any person whom the examiner believes, through observation or any other credible evidence, to be physically or psychologically unfit for the examination at that time.

(3) The examiner shall, immediately upon request of the examinee, terminate an examination in progress.

(4) The examiner shall not render a verbal or written opinion based on chart analysis, until the examinee has had a reasonable opportunity to explain any reactions to pertinent questions.

(5) The examiner shall not interrogate or conduct an examination of an examinee's sexual behavior, or ask any questions that can be construed as being sexually oriented or personally embarrassing to the examinee, regardless of marital status, unless the topic is a specific issue or unless it refers to the basic matter pertinent to the examination.

(6) The examiner shall not conduct an examination if the examiner has reason to believe the examination is intended to circumvent or defy the law.

(7) The examiner shall not knowingly issue, or permit an employee to issue, a polygraph exam-

ination report which is misleading, biased, or falsified in any way. Each report shall be a factual, impartial, and objective account of the pertinent information developed during the examination and the examiner's professional conclusion, based on analysis of the polygraph charts.

(8) The examiner shall not conduct a polygraph examination without first reviewing the issues to be covered during the examination and the general content of the questions to be asked during the examination with the examinee.

(9)(a) During deception tests, the examiner shall not render a conclusive truthful or deceptive decision, based on chart analysis, without presenting the same relevant test questions to the examinee three (3) or more times.

1. If the examinee has submitted to fewer than three (3) presentations of each relevant question, the results shall be recorded as no opinion.

2. The fact of the examinee's refusal shall be noted in the verbal or written report of the examination.

(b) An examiner may terminate an examination in progress at the examiner's discretion if, in the examiner's opinion, the examinee has become physically or psychologically unfit, or has become uncooperative to the point that it would be useless to continue the examination.

(10)(a) All questions and answers asked during a polygraph examination shall be marked on the polygraph charts at the appropriate place on the chart where the question was asked and the answer given.

(b) If a question sheet with numbered questions is used, the number of the asked question along with the answer given shall be noted and the question sheet shall be attached to the polygraph chart and made a part of the examinee's file.

(c) Each polygraph chart shall be identified as to the person being examined, the examiner, time and date of the examination, and the chart number.

(11)(a) The examiner shall not, unless professionally qualified to do so, include in any written report any statement purporting to be a medical, legal, or psychiatric opinion or which would infringe upon areas under the cognizance of professionals in those fields.

(b) The examiner may describe the appearance or behavior of the examinee, if:

1. The information is pertinent to the examination; and

2. The examiner refrains from offering any diagnosis which the examiner is professionally unqualified to make.

(12)(a) The examiner shall not offer testimony concerning the charts or conclusions presented by another examiner unless the examiner is thoroughly familiar with the techniques and procedures used by the other examiner.

(b) An examiner may testify concerning the examiner's independent examination of the same examinee.

(13) An examiner shall report to the cabinet any action or misconduct on the part of another examiner which would be in violation of the provisions of KRS Chapter 329 or 502 KAR Chapter 20.

Section 4. Detection of Deception Examinations of Victims of Sex Crimes. (1) The victim of a sex crime has the right to refuse examination and shall be informed of this right.

(2) An examination shall not be requested, required, or conducted of a sex crime victim as a condition for proceeding with the investigation of the crime.

(3) Except as provided by subsection (4) of this section, examination of a sex crime victim shall not be conducted unless:

(a) The victim's consent to the examination is in writing and received by the examiner before the examination begins;

(b)1. The suspect has declined examination, has passed an examination or has been found unsuitable for an examination; or

2. After an investigation, the suspect cannot be identified or located;

(c) There is a clear issue to test on based on:

1. Interviewing the victim, any witnesses, any potential witnesses, and the suspect, if possible;
2. Submitting any evidence to the laboratory if appropriate; and
3. Pursuing any leads identified during the investigation; and

(d) Before the examination, the investigating officer has provided the examiner with a signed, written document:

1. Describing any inconsistencies in the victim's allegation;
2. Stating if any inconsistency can be substantiated by existing physical or testimonial evidence;
3. Listing investigative strategies that have been used in the case;
4. Declaring that the victim has not been told that the investigation would cease if the victim refuses to consent to an examination; and
5. Containing no reference to whether the victim is behaving like a typical sexual assault victim.

(4)(a) A sex crime victim may request examination. The investigator may arrange for the requested examination and the examination may be conducted if:

1. The request is voluntary and at the victim's own initiative;
2. It is documented in writing that the request is by the victim;
3. The written request is signed by the victim;
4. The written request is received by the examiner before the examination begins; and
5. The victim has an opportunity to consult with a victim's advocate prior to the examination.

(b) An examination shall not be considered to be at the victim's request if the victim agrees to the examination in response to a request by the investigator to take an examination.

(5) Every reasonable attempt shall be made to avoid visible and audio contact between the victim and suspect during the examination process. If contact is made, the examination shall be postponed and rescheduled for another date and time.

(6) The victim shall be advised that at the victim's request, a victim's advocate shall be allowed to watch the examination from a two (2) way mirror or by closed circuit television in real time. The examiner and the victim shall be the only two (2) individuals inside the examination room during the entire examination process, except if a language interpreter is required.

(7) At the beginning of the examination, the examiner shall advise the victim that the examination is a stressful experience and that if the victim feels uncomfortable at any time with the polygraph process, it shall be terminated immediately.

(8) The victim shall not be interrogated under any circumstance. A post-examination debriefing shall be conducted to give the victim the opportunity to explain any unresolved responses on the examination. The victim shall be advised that upon the victim's request, a victim's advocate shall be allowed to watch the debriefing session from a two (2) way mirror or closed circuit television.

(9) The testing format utilized shall be a researched comparison/control question format (CQT). The relevant questions shall be answered with a "yes" answer.

(10) An irrelevant/relevant question format shall not be utilized on any sex crime victim.

(11) Past sexual history of the victim shall not be explored by the examiner.

(12) Sex related comparison/control questions shall not be asked of the victim. Lie comparison questions excluding sex shall be used on sex crime victims.

(13) At the end of the examination, the examiner shall advise the victim of the results.

(14) Quality control of the examination shall be conducted in writing and maintained with the polygraph file at least until after adjudication of the case.

(15) The entire examination shall be videotaped with adequate picture and sound from the time the victim walks into the testing room until the victim leaves the testing room for the last time. There shall not be a break in the videotaping of the process. The videotape shall be maintained as

evidence until at least the investigation is adjudicated.

Section 5. (1) The examiner shall maintain on file for at least two (2) years all records, papers, polygraph charts, consent to examination forms, notes, question lists or sheets, and reports of polygraph examinations that the examiner conducted.

(2)(a) Except as provided in paragraph (b) of this subsection, an examiner who leaves the employment of another examiner, agency, firm, or company shall be allowed access, after showing reasonable cause, to the files of examinations that the examiner conducted during the two (2) year period prior to the date of the request.

(b) Without the approval of the employing examiner, agency, firm, or company, the examiner shall not remove any of the material contained in the file or make notes of any of the information contained therein.

(3) The cabinet shall, if there is just cause, inspect the records, reports, polygraph charts, and all paperwork connected with an examination to determine if an examiner is conducting examinations in accordance with the provisions of KRS Chapter 329 and 502 KAR Chapter 20.

Section 6. Continuing Education Requirements. (1) Each examiner shall complete at least twenty (20) hours of instruction in subject matter relating directly to the polygraph profession during the licensing year. Acceptable polygraph training for purposes of this requirement shall be:

(a) Polygraph seminars, courses, or other training sponsored by any national polygraph association, state polygraph association, or American Polygraph Association accredited polygraph school;

(b) Any training in polygraphy sponsored by a law enforcement training academy approved by the secretary or his designee if the instructor is certified by the Kentucky Law Enforcement Council;

(c) Training received during the course of internship established in 502 KAR 20:030 and approved by the Secretary in writing; or

(d) Any training directly relating to polygraph subject material which has been preapproved by the secretary or his designee in writing.

(2) Each examiner submitting a request to renew the examiner's license for the following year shall also submit proof of completion of the required instruction such as a copy of the diploma, certificate, or other documentation confirming instruction and attendance. (5 Ky.R. 285; Am. 337; eff. 11-1-1978; 14 Ky.R. 607; eff. 11-6-1987; 31 Ky.R. 417; 705; eff. 11-5-2004; 33 Ky.R. 4249; 34 Ky.R. 243; eff. 8-31-2007; 36 Ky.R. 919; eff. 5-2-2010.)